IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA 1928

OP.No. 719 of 2003(I)

PETITIONER:

T.D.SEBASTINE, S/O. DEVASSY,
AGED 58 YEARS, THACHETHU HOUSE, KARSHAKA ROAD,
ERNAKULAM, COCHIN-16.

BY ADV. SRI.P.V.SANTHOSH JOSE
SRI.M.G.KARTHIKEYAN
SRI.M.ABILASH
T.A.LUXY

RESPONDENT:

GREATER COCHIN DEVELOPMENT AUTHORITY
(GCDA), REPRESENTED BY ITS SECRETARY,
ERNAKULAM, COCHIN-682 020.

BY ADV. SRI.P.R.RAMACHANDRA MENON, SC,GCDA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 COPY OF RECEIPT.

EXT.P2 CONSENT LETTER DT. 14-6-1999.

EXT.P3 REQUEST DT. 12-1-2002.

EXT.P4 NOTICE DT. 12-7-2002.

EXT.P5 TRUE COPY OF CONSENT LETTER.

RESPONDENT'S EXHIBITS:

EXT.R1 CONSENT LETTER DT. 14-7-1999.

EXT.R2 RESOLUTION DT. 22-9-1999.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 719 of 2003

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Dated this, the 3rd January, 2007.

J U D G M E N T

Petitioner was running a small hotel/tea shop near the South Railway Station in 1¾ cents of land. The petitioner agreed to part with possession of the said land for a development project of the Greater Cochin Development Authority on condition that the GCDA would allot to the petitioner equal extent of land somewhere else and would also pay an amount of Rs. 55,000/- as compensation. The petitioner agreed to surrender the above said land on receipt of the alternate land and the compensation amount of Rs. 55,000/-. The petitioner admits that he has been given alternate land of equal area but his grievance in this original petition is that he has only been paid Rs. 20,000/- as compensation instead of the agreed amount of Rs. 55,000/-. The petitioner therefore submits that he is not liable to vacate the premises unless and until the balance amount of Rs. 35,000/- is paid. In support of his contention, the petitioner relies on Ext. P2 consent letter alleged to have been issued to him in which the amount of Rs. 55,000/- has been mentioned as compensation after receipt of which he had agreed to surrender the land. The petitioner therefore seeks the following reliefs in this original petition:

> "1. Issue a writ of mandamus or any other appropriate writ,order or directions, directing the respondent to pay the balance compensation amount Rs. 35,000/- to the petitioner forthwith.
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> 2. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent to consider and take appropriate decision on Ext. P3 and P4 requests made by the petitioner and till then the petitioner shall not be evicted from his Tea Shop building having Number 38/60 of the Cochin Corporation.
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> 3. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents from not evicting the petitioner from the Tea Shop in building No. 38/60 of the Cochin Corporation till the balance compensation amount Rs. 35,000/- is paid to them."

2. The respondent has filed a counter affidavit disputing the contentions of the petitioner. According to the respondent, what has been agreed by the petitioner is that he would surrender 1¾ cents of land on the GCDA giving him alternate plot of equal area and an amount of Rs. 20,000/- as compensation. They have produced Ext. R1 which is stated to be the consent letter given by the petitioner in this regard, in which the compensation amount stipulated is only Rs.20,000/-. To this counter affidavit, the petitioner is stated to have filed a reply affidavit, which is not on record. But, the learned counsel for the respondent has made available to this Court a copy of the same for perusal. In the same, the petitioner has produced Ext. P5 consent letter which mentions Rs. 55,000/- as the compensation amount. Counsel for the respondent would submit that the genuineness of Ext. P5 document is strongly disputed by the respondent, especially in view of Ext. R1 letter.

3. In view of the conflicting documents and averments of the parties, I am of opinion that this is a matter which should more appropriately be dealt with by a civil court and therefore the parties are relegated to their remedy by way of a civil suit. Since the petitioner has already been given 1¾ cents of land as also Rs.20,000/-, I am of opinion that surrender of the land in question need not be delayed further for this purpose.

Accordingly, I dispose of the original petition with liberty to the petitioner to approach the appropriate civil court for claiming the balance compensation amount allegedly due to him, if the same is actually due to him. But, I make it clear that in the meanwhile, the surrender of the land need not be delayed.

Sd/- S. Siri Jagan, Judge.

Tds/